ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149

REPLY COMMENTS OF AT&T CORP.

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TABLE OF CONTENTS

SUMMARY

AT&T strongly supports the Commission's conclusion in its First Report and Order in CC Docket No. 96-149 that data disclosure requirements are essential to implement § 272(e)(1), and believes that the metrics proposed in Appendix C to the FNPRM require precisely the types of data necessary to reduce the risk that BOCs would discriminate in favor of themselves or their affiliates in provisioning.

The comments submitted in this proceeding reveal a broad consensus in favor of the FNPRM's approach to § 272(e)(1) disclosure. The commenters also support the specific metrics the Commission proposes, with some modifications. Although a few BOCs assert that no reporting of any kind is required to implement that section, their arguments cannot withstand scrutiny.

The CLEC commenters unanimously urge the Commission to adopt further requirements so as to capture the quality of a BOC's provisioning, as opposed to merely the speed with which it provides a requested service. These commenters also agree that both the plain language of § 272(e)(1) and the Commission's order in this proceeding require the adoption of metrics to measure BOCs' provisioning of local exchange services as well as exchange access.

There is consensus among the commenters that § 272(e)(1) reports should be made available on the Internet with underlying data retained for two years, should present data separately for a BOC and each of its affiliates, and should be prepared separately for each state in a BOC's region. The commenters split on the question whether § 272(e)(1) disclosure should be monthly or quarterly. As AT&T showed in its comments, however, quarterly reporting would not be adequate to permit BOCs'

competitors either to monitor their provisioning, or to enforce complaints arising therefrom before suffering significant competitive harm.

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Pursuant to Section 1.415 of the Commission's Rules, and its First Report and Order and Further Notice Of Proposed Rulemaking released December 24, 1996 ("FNPRM"),[1] AT&T Corp. ("AT&T") submits these reply comments concerning the public disclosure requirements necessary to implement § 272(e)(1) of the Telecommunications Act of 1996 ("1996 Act").[2]

I. There Is Consensus Support For The FNPRM's Proposed § 272(e)(1) Access Provisioning Report Format, With Some Modifications

The comments reveal a broad consensus in favor of the FNPRM's approach to § 272(e)(1) reporting for BOCs' provisioning of exchange access. A few

1 First Report and Order and Further Notice of Proposed Rulemaking, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, CC Docket No. 96-149, FCC 96-489, released Dec. 24, 1996 ("NPRM").

2 A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments.

BOCs assert that no reporting of any kind is required to implement that section, but their arguments cannot withstand scrutiny. The BOC commenters that address the specific metrics the Commission proposes generally support the reporting format presented in Appendix C to the FNPRM, while the CLEC commenters agree unanimously that the proposed measures are appropriate. All of the CLECs, however, urge the Commission to adopt further requirements so as to capture the quality of a BOC's provisioning, as opposed to merely the speed with which it provides a requested service.

Although a few BOCs offer broad objections to the Commission's proposed disclosure requirements, their claims provide no basis for fundamental changes to the FNPRM's proposal. Bell Atlantic and NYNEX contend in their joint comments that no reporting requirements of any kind should be required because the biennial audits required by § 272(d), the disclosure requirements of § 272(b)(5), and the Commission's existing reporting requirements provide sufficient information.[3] This claim is completely unsupported, however, as their comments do not even attempt to indicate the specific information from these sources that would be relevant to measuring provisioning intervals. Indeed, it is difficult to imagine how an audit or disclosure of transactions could possibly reveal information such as whether a BOC completed an order by its promised due date. In addition, the Commission's order issued in conjunction with the FNPRM expressly found that public reporting of data concerning BOCs' provisioning of their own and their affiliates' operations was necessary to ensure compliance with § 272(e)(1) and to promote

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[3] Bell Atlantic / NYNEX, pp. 2-3.

enforcement.[4] The order also found that this information was exclusively controlled by the BOCs, and so would not be available to competitors absent disclosure requirements.[5] As the FNPRM tentatively concluded, and as AT&T and others showed in their comments, the Commission's existing reporting requirements do not provide the types of data required to monitor compliance with § 272(e)(1).[6]

Similarly, SBC argues that the Commission should not require § 272(e)(1) reporting because it would be duplicative of requirements already imposed by some state PUCs within its region.[7] However, SBC nowhere specifies what aspects of the FNPRM's proposal are duplicative, and its comments suggest that the state reports it points to do not in fact address the issues of concern. For example, SBC relies on a Texas report which it says addresses "provisioning of local exchange services," not exchange access; while it describes the other states' reports simply as "service quality reports," without further explanation.[8]

Even if the handful of state reports SBC cites duplicated the FNPRM's proposal precisely, no commenter contends that all states impose similar requirements -- indeed, PacTel expressly states that it does not provide the relevant data to PUCs in its

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4 FNPRM, ¶ 243.

5 Id., ¶ 242.

6 See, e.g., AT&T, pp. 2-3; TCG, pp. 6-8.

7 SBC, p. 7.

8 Id.

region.[9] There is thus a clear need for national reporting standards to implement § 272(e)(1). If a few state commissions require reporting of some information that is duplicative of the FNPRM's proposal, that fact merely serves to reduce any alleged burden the Commission's proposed reporting requirements would place on BOCs, as they will be required to collect such information in any event.

PacTel contends that the FNPRM's proposed report format is flawed because in some respects it would go beyond the information it currently provides to IXCs, and so might require the BOCs to modify their current data collection practices. PacTel also argues that the information it currently provides to interexchange carriers is indicative of "what IXCs have considered important."[10] In fact, as AT&T showed in its October 3rd ex parte presentation, the metrics proposed in FNPRM Appendix C are precisely those that AT&T long has considered important.

In all events, PacTel's claims ignore the salient fact motivating the instant proceeding: Under the 1996 Act, BOCs will for the first time be competing directly with the same IXCs to whom they supply exchange access services. In the past, interexchange carriers sought to monitor BOC provisioning as a means to ensure the quality of their own services, just as they might measure the quality of any of their suppliers. Suppliers, however, ordinarily have economic interests that are aligned with those of their customers. In contrast, once BOCs receive § 271 approval and begin offering in-region interLATA service, they will be competing directly against their exchange access "customers."

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9 PacTel, p. 11. See also Ameritech, p. 8 (information in FNPRM Appendix C not currently tracked "in the proposed form.").

10 PacTel, p. 3.

Accordingly, BOCs will have an incentive to skew their provisioning practices in favor of their affiliates that did not exist prior to enactment of the 1996 Act. Nothing in § 272(e)(1) limits data disclosure to metrics currently reported, or provides that BOCs are to be spared any need to modify their current data collection practices. Indeed, it would be extremely surprising to find that the radically new competitive environment created by the 1996 Act did not require disclosure of data that differs from than that the BOCs currently provide to IXCs.

The final ground of broad disagreement with the FNPRM's proposal is offered in the joint comments of Bell Atlantic and NYNEX, which offer a critique based on deeply flawed assumptions about statistics. These commenters argue that the Commission's disclosure requirements should aggregate large volumes of data in order to "minimize variance," asserting that this "principle" supports their push for quarterly reporting on a region-wide basis.[11]

Aggregation of the kind Bell Atlantic and NYNEX propose is calculated to obscure the very information that § 272(e)(1) is intended to seek. "Variance" is precisely what the FNPRM's proposed reports are intended to detect -- that is, whether a BOC is favoring itself or its affiliate in provisioning. These commenters propose to report gross averages that would lump together disparate data so as to hide meaningful variation. For example, if a BOC discriminated against competitors in one state in its region in which competition was progressing rapidly by provisioning itself very quickly, but extended its provisioning intervals in another state in which it faced few competitors, the "aggregated"

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[11] See Bell Atlantic / NYNEX, p. 4.

result between the two states could tend to show an average provisioning interval that would be the same as that the BOC provided to its competitors.[12] Simple averages, without more, reveal very little about the phenomena the Commission seeks to measure. The old adage is true: it is indeed possible to drown in a lake with an "average depth" of only six inches.

Despite their purported search for "statistically valid" results, Bell Atlantic and NYNEX propose a reporting format that reveals almost no useful information (and that is even shorter than the one-page instructions that accompany it). Moreover, though they urge aggregation in the name of "deviation and confidence levels," these commenters do not propose to report any measures that might shed some light on their averaged data, such as the standard deviations for the mean figures they propose to present.

As AT&T showed in its comments, the measures proposed in the FNPRM are an excellent compromise between reporting averaged data, and requiring BOCs to reveal competitively sensitive information such as absolute numbers of lines provisioned.[13] By depicting provisioning results in terms of percentages achieved in successive periods, the Commission's proposal reduces the risk that apparently nondiscriminatory mean results could mask competitively significant discrimination. Although Bell Atlantic and NYNEX complain that the Commission's proposal requires reporting on "incremental"

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12 PacTel makes the same error when it urges the Commission to use a two-hour interval rather than one-hour for the "time to restore and trouble duration" metric, because doing so "would capture a larger sample of occurrences." PacTel, p. 8.

13 AT&T, pp. 3-4 & n.8; see also U S West, p. 7; TRA, p. 10. Even Bell Atlantic and NYNEX recognize the value of this aspect of the Commission's approach. See Bell Atlantic / NYNEX, p. 3.

steps in the provisioning process (a charge they never explain the meaning or significance of),[14] the alternative they propose would generate only meaningless averaged data; while no commenter supports disclosure of absolute numbers of requests by BOCs or their affiliates. The types of metrics proposed in the FNPRM steer a wise and workable middle course that protects the interests of both BOCs and their competitors.

The only exchange access metrics proposed in Appendix C to the FNPRM that elicit significant comment are categories one and two: Successful Completion According To Desired Due Date, and Time From BOC-Promised Due Date To Circuit Being Placed In Service. The BOC commenters argue that category one is improper because it relies upon their competitors' requested delivery dates, a factor beyond their control.[15] AT&T recognized this potential objection in its comments, but also observed that proposed category two was likewise potentially subject to "gaming," because it measures a BOC's performance solely against a timetable that it controls.[16]

It is crucial that the Commission resolve the dispute over these service categories. One of the easiest ways a BOC could discriminate in provisioning -- and one of the most difficult to detect -- would be to speed up service for its affiliate's urgent requests and delay those that were less important, while doing the opposite for its competitors. Although some BOCs protest that they cannot know when a competitor considers a request to be urgent, they do have at least one obvious indicator of how

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14 See, e.g., id., p. 7.

15 See Ameritech, pp. 9-10; Bell Atlantic / NYNEX, p. 5; BellSouth, p 3; PacTel, p. 5; U S West, p. 5.

16 AT&T, pp. 5-7; see also MCI, pp. 8-9; TRA, p. 11.

rapidly their customers need service -- namely, the due dates that they request. While it would not be impossible for a competing carrier to game its requested deadlines, its requested due date is the best available measure of how urgently it needs an order completed in order to meet the demands of its own customers. In contrast, a BOC's promised due date is simply an artifact of its provisioning process, and could more easily be manipulated.

Category one of the FNPRM's proposal does not adequately capture potential discrimination because it measures only the percentage of customer deadlines missed, and thus treats failure to meet a requested delivery date by one day in the same fashion as the failure to meet that due date by six months. In order to obtain more useful information, the Commission should adopt one of the two options AT&T suggested in its comments.[17] First, service category two could be changed to "Time From Customer-Desired Due Date To Circuit Being Placed In Service," adding additional, valuable information to category one. Alternatively, the Commission could add an additional metric to those proposed in Appendix C, "Time from Service Request to Installation," which would be measured in terms of percentage installed within each successive 24-hour period until 95% completed. AT&T's second alternative would yield information that could not be manipulated by BOCs or their access customers, and so would provide a check on attempts to game current categories one and two.

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[17] See AT&T, pp. 6-7.

A few BOCs offer inconsequential objections to proposed service category three, Time To Firm Order Confirmation ("FOC").[18] Time to FOC is of vital importance to competing carriers, because it is one of the key pieces of information which they must provide to their own customers. Further, if a BOC does not provide a timely FOC and subsequently misses its due date, the carrier placing the affected order will not know of that failure until that due date actually passes. Thus, that carrier cannot warn its own customers or prepare its provisioning processes to accommodate the delay. By providing FOCs to their affiliates farther in advance than to their competitors, or by simply withholding FOC information from competitors altogether, BOCs could confer a significant, and discriminatory, advantage on their affiliates.

The only other service categories proposed in the FNPRM to which the BOCs offer any arguably serious objections are numbers four and six: Time From PIC Change Request To Implementation, and Time To Restore PIC After Trouble Incident, respectively. Bell Atlantic, NYNEX and BellSouth assert that because "PIC changes are generally mechanized," these categories are unnecessary.[19] However, in its First Report

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[18] Bell Atlantic and NYNEX complain that this metric measures an "interim" step, although they never explain why that fact is relevant, much less dispositive, given the importance of FOCs to BOC's competitors. Bell Atlantic / NYNEX, p. 6. Ameritech objects to category three because FOCs are negotiated between BOCs and their customers, and so are not wholly controlled by the BOCs themselves. Ameritech, pp. 9-10. They do not contest, however, that FOCs are vitally important to competing carriers, or that they could readily be used by BOCs to discriminate in favor of their affiliates. Finally, U S West states that category three should be measured as the interval between the time a customer "formally notifies U S West of a service order" and "the negotiated formal date when service is promised." U S West, pp. 5-6. Other than inserting the undefined term "formal," this formula does not seem to change category 3 in any fashion.

[19] Bell Atlantic / NYNEX, pp. 6-7; BellSouth, pp. 3-4.

and Order in this proceeding, the Commission considered and expressly rejected the proposition that automated systems eliminate the need for disclosure requirements.[20] Among the other BOCs, U S West agrees that the measures in categories 4 and 6 are "relevant,"[21] while the remaining commenters do not object to the FNPRM's proposal to measure these aspects of provisioning.[22]

II. The Comments Confirm That § 272(e)(1) Reporting Should Include Quality-Related Metrics In Order To Detect And Deter Discrimination In Provisioning

The CLEC commenters agree unanimously that the Commission should add additional metrics to its proposed reporting requirements in order to measure the quality of BOC provisioning.[23] The Commission concluded in its First Report and Order in this proceeding that § 272(e)(1) requires BOCs to "treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange

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20 FNPRM, ¶ 117.

21 U S West, pp. 6-7.

22 See Ameritech, pp. 14-15 (arguing only that categories 4 and 6 should not be measured by PIC, and suggesting no alternative measure); PacTel, p. 8 (stating that it currently provides category 6 information to AT&T); SBC, pp. 5-6 (willing and able to provide these data). PacTel also contends that although it finds category 4 "acceptable," it should be measured in 48-hour increments. PacTel, p. 7. No reason is offered for this proposed change, save reference to unnamed "current standards." PacTel's proposal is plainly unacceptable, as it would permit BOCs to favor their § 272 affiliates by as much as 2 full days before the extremely rough-grained measurement they propose would detect any evidence of discrimination.

23 See AT&T, pp. 8-11; MCI, pp. 5-6; Sprint, p. 3; TCG, p. 4. In addition, the TRA urges that adoption of "the more extensive service category list proposed by AT&T [in its October 3rd ex parte] would provide additional useful information ...." TRA, p. 10.

access."[24] The CLEC commenters persuasively show that having their requests fulfilled at the same rate as those of BOC affiliates is only one element of nondiscriminatory provisioning. Receiving the same service intervals means little if a BOC's competitor is provisioned with inferior services, and no reasonable interpretation of § 272(e)(1) could find such service to be "nondiscriminatory."[25]

Each of the CLECs proposes essentially the same limited group of exchange access quality measures. AT&T, TCG and the TRA all urge the adoption of the three quality-related metrics AT&T first offered in its October 3, 1996 ex parte proposal:[26] Incidence Of New Circuit Failures, Failure Frequency, and Network Repeat Failure. MCI and Sprint also propose three quality measures corresponding closely to these categories. These proposed metrics would represent a minimal burden on BOCs, and would provide data that will prove essential to enforcing § 272(e)(1)'s mandate.

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24 FNPRM, ¶ 239.

25 As AT&T stated in its comments, although the Commission has decided that at this time it will adopt disclosure requirements only pursuant to the nondiscrimination obligations imposed by § 272(e)(1), the remaining nondiscrimination requirements of § 272 also provide an ample, independent basis to adopt the quality measures proposed by the CLEC commenters. See AT&T, p. 2 n.2. If, the Commission finds that § 272(e)(1) does not provide a sufficient basis to permit it to adopt quality metrics, then AT&T has asked the Commission to reconsider its decision not to impose reporting requirements pursuant to the other nondiscrimination provisions of § 272. See AT&T Petition For Reconsideration And Clarification, filed February 20, 1997, p.2, n.4.

26 Letter to William F. Caton, FCC, from Charles E. Griffin, AT&T, Ex Parte - CC Docket No. 96-149, October 3, 1996, Attachment, p. 2.

III. The Comments Confirm That The Commission Should Adopt Additional Disclosure Requirements To Facilitate The Detection Of Discrimination In The Provision Of Exchange Service

The CLEC commenters also agree unanimously that the plain language of § 272(e)(1) mandates nondiscriminatory provisioning not only for exchange access, but for local exchange services as well.[27] As the Commission's order in this proceeding holds, § 272(e)(1) mandates that BOCs treat unaffiliated entities "on a nondiscriminatory basis" in providing both "telephone exchange service and exchange access."[28] Particularly in light of the Commission's decision to permit § 272 affiliates to offer facilities-based local service, BOCs plainly will have the same opportunities to act anticompetitively in provisioning telephone exchange service that prompted the Commission to impose reporting requirements to monitor their activities in providing exchange access, and their competitors will face the same insurmountable difficulties in obtaining information in the absence of disclosure requirements.

The only arguments the BOC commenters offer to oppose reporting requirements for local exchange provisioning is the assertion that CLECs can include

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27 See AT&T, pp. 11-14; MCI, p. 4; Sprint, p. 1; TCG, pp. 9-11.

28 FNPRM, ¶ 239 (emphasis added). While all ILECs are subject to strict nondiscrimination requirements under § 251, Congress imposed specific prohibitions on BOCs' dealings with their affiliates in sections 272(c) and 272(e). Some requirements of sections 251 and 272 appear to overlap, but the plain language of the nondiscrimination provisions of § 272 precludes any assertion that that section was not intended to address telephone exchange service. If the Commission determines that disclosure requirements and other provisions necessary to implement § 272's nondiscrimination requirements in the local exchange context are beyond the scope of the instant proceeding, then it must, at minimum, consider § 272's requirements in conjunction with its implementation of the nondiscrimination provisions of § 251.

monitoring provisions in their § 251 interconnection contracts.[29] While interconnection agreements in theory could include all the elements the CLECs request for local exchange provisioning reporting under § 272(e)(1), there is no guarantee that a BOC negotiating such a contract will agree to such terms, or that a state arbitrator will require them if the BOC does not consent. Section 272(e)(1) imposes an affirmative nondiscrimination obligation. Congress expressly required BOCs to provision their competitors at least as rapidly as they provision themselves, and the Commission has determined that the information required to monitor and enforce that mandate will not be available in the absence of disclosure requirements. There is simply no basis for the claim that § 272(e)(1) imposes reporting obligations in the exchange access arena, but leaves nondiscriminatory provisioning of local exchange service solely to negotiations in the § 251 interconnection process. AT&T urges the Commission to adopt the local exchange reporting requirements it proposed in Exhibit 2 to its comments.

IV. Method and Timing Of Section 272(e)(1) Reporting

The comments generally concur as to the method and timing of § 272(e)(1) reporting. First, there is widespread agreement that reports should be made available on the Internet in order to simplify their distribution for both BOCs and their customers.[30] AT&T urges once again, however, that the Commission require BOCs to file a copy of

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29 See PacTel, pp. 10, 14-15. Ameritech states that § 272(e)(1) reporting requirements should be limited to the provisioning of exchange access services, but it offers no reasons to support this claim. See Ameritech, p. 2.

30 See Ameritech, p. 5; AT&T, pp. 14-17; MCI, p. 2; SBC, pp. 3-4; Sprint, pp. 5-6; TRA, pp. 6-7; U S West, p. 4. The only party opposing Internet posting of reports is BellSouth, p. 3.

their reports with the Commission in order to prevent tampering with electronic-form reports after they are posted on the Internet.[31] Also, the majority of commenters that address the issue propose that BOCs should retain the data underlying § 272(e)(1) reports for two years.[32]

Second, the clear majority of commenters propose that disclosure should be made separately for each state in a BOC's region.[33] The only parties to recommend regional reporting are Bell Atlantic, NYNEX and U S West, which base their contentions on their erroneous claims concerning the benefits of "aggregated" data.[34] Most commenters also propose that data be reported separately for BOCs and each of their affiliates, and AT&T believes that this result is required by the plain language of § 272(e)(1).[35] PacTel and U S West contend that reporting should be separated into provisioning of BOC requests, and provisioning for all affiliates combined; however both

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31 See AT&T, pp. 16-17.

32 See Ameritech, p. 17; AT&T, p. 17; U S West, p. 9. PacTel proposes that BOCs not be required to retain these underlying data. See PacTel, p. 12.

33 See Ameritech, p. 16; AT&T, pp. 20-21; MCI, p. 10; PacTel, p. 13; Sprint, p. 5; TRA, p. 12.

34 See Bell Atlantic / NYNEX, p. 4; U S West, p. 9.

35 See AT&T, pp. 18-20; SBC, p. 8; Sprint, pp. 2-3; TCG, pp. 14-15; TRA, p. 12. But see Ameritech, p. 16. The majority of commenters that address the issue also propose that BOCs be required to disclose, at minimum, aggregate § 272(e)(1) information concerning its provisioning of unaffiliated entities. See MCI, p. 7; Sprint, pp. 2-3; TCG, proposed report format. AT&T agrees that such a requirement would be an invaluable means for the Commission and competitors to monitor a BOC's compliance with 272(e)(1), particularly given that smaller carriers may have difficulty compiling provisioning data themselves. Moreover, once a BOC has mechanisms in place to collect § 272(e)(1) reporting data, the incremental burden imposed to collect that same information concerning its provisioning of competitors will be relatively light.

base this claim once again on the mistaken theory that the Commission should seek maximum "aggregation."[36]

Finally, the commenters split on the question of whether § 272(e)(1) reports should be filed monthly[37] or quarterly,[38] with both CLECs and BOCs supporting each alternative. As AT&T and other parties stated in their comments, consumers and businesses will be watching carefully for any sign that a competing carrier may not be able to deliver high-quality service. End-users likely will rapidly abandon a new entrant, or even an established IXC, if they perceive that it offers lower quality than a BOC incumbent. Quarterly reporting would permit far too much time to elapse before a carrier could document and prove a pattern of discriminatory provisioning. Moreover, this problem of proof would be compounded by the fact that § 272(e)(1) reports would offer only four data points per year. To the extent that monthly reports might appear to show patterns that quarterly reports would demonstrate are random fluctuations, such a claim could also be supported by combining data from multiple monthly reports. Further, any added administrative burden imposed by monthly disclosure is minimal. Quarterly reporting would require BOCs to track the same data each month; a monthly reporting obligation would merely require whatever incremental effort is necessary to place those data in the format the Commission specifies.

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36 See PacTel, p. 13; U S West, p. 9.

37 See AT&T, pp. 17-18; SBC, p. 8; Sprint, p. 4; TRA, p. 8.

38 See Ameritech, p. 17; Bell Atlantic / NYNEX, p. 4 (arguing that quarterly reporting is necessary to achieve "aggregation" of data); MCI, p. 9; PacTel, p. 12; TCG, p. 16.

CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission's proposed § 272(e)(1) reporting requirements should be modified and adopted prior to enactment.

Respectfully submitted,

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March 21, 1997

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MCI Telecommunications Corporation ("MCI")

Pacific Telesis Group ("PacTel")

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Telecommunications Resellers Association ("TRA")

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CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 21st day of March, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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